

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

5 Case No.

05-60200

6 CALPINE CORPORATION, et al.,

7 Debtors.

8 -----x

9 September 11, 2007

United States Custom House

10 One Bowling Green

New York, New York 10004

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12  
13 Hearing Pursuant to Kirkland and Ellis LLP

14 Notice of Amended Agenda of Matters Scheduled for Hearing.

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18 B E F O R E:

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20 HON. BURTON R. LIFLAND,

21 U.S. Bankruptcy Judge  
22  
23  
24  
25

A P P E A R A N C E S:

KIRKLAND & ELLIS LLP

Attorneys for the Debtors,

Calpine Corporation, et al.  
200 East Randolph Drive  
Chicago, Illinois 60601

BY: DAVID R. SELIGMAN, ESQ.,  
ANDREW R. McGAAN, ESQ.,

HELENA C. HUANG, ESQ.,  
153 East 53rd Street  
New York, New York 10022

MARC KIESELSTEIN, ESQ.  
655 Fifteenth Street N.W.  
Washington, D.C. 20005

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP  
Conflicts Counsel for the Debtors

101 Park Avenue  
New York, New York 10178

BY: STEVEN J. REISMAN, ESQ.

MORGENSTERN JACOBS & BLUE, LLC

Conflicts Counsel for the Debtors  
885 Third Avenue  
New York, New York 10022

BY: LAURA J. LEFKOWITZ, ESQ.

A P P E A R A N C E S (Continued):

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for the Official Committee  
of Unsecured Creditors

590 Madison Avenue

New York, New York 10022

BY: MICHAEL S. STAMER, ESQ.,  
PHILIP DUBLIN, ESQ.,  
ABID QURESHI, ESQ.

PAUL WEISS RIFKIND WHARTON & GARRISON LLP

Attorneys for the Unofficial Committee

of Second Lien Debt Holders

1285 Avenue of the Americas

New York, New York 10019

BY: ELIZABETH R. MCCOLM, ESQ.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

Attorneys for the Equity Committee

One New York Plaza

New York, New York 10004

BY: GARY L. KAPLAN, ESQ.,  
MICHAEL DE LEEUM, ESQ.

A P P E A R A N C E S (Continued):

LUSKIN, STERN & EISLER LLP

Attorneys for The California State Parties  
330 Madison Avenue  
New York, New York 10017

BY: TREVOR R. HOFFMANN, ESQ.

CLEARY GOTTlieb STEEN & HAMILTON LLP

Attorneys for The Dow Chemical Company  
One Liberty Plaza  
New York, New York 10006

BY: LUKE A. BAREFOOT, ESQ.

JONES DAY

Attorneys for South Carolina Pipeline  
Corporation n/k/a Carolina Gas Transmission  
77 West Wacker  
Chicago, Illinois 60601

BY: MARK A. CODY, ESQ.

MAYER BROWN LLP

Attorneys for Rosetta  
700 Louisiana Street  
Houston, Texas 77002

BY: CHARLES S. KELLEY, ESQ.

1 A P P E A R A N C E S (Continued):  
2  
3

4 CADWALADER, WICKERSHAM & TAFT LLP

5 Attorneys for Rosetta

6 One World Financial Center  
7 New York, New York 10281

8 BY: JOHN H. BAE, ESQ.

9 FULBRIGHT & JAWORSKI L.L.P.

10 Attorneys for Utility Choice

11 666 Fifth Avenue

12 New York, New York 10103

13 BY: DAVID A. ROSENZWEIG, ESQ.,

JEFFREY D. PALMER, ESQ.

14 1301 McKinney

15 Houston, Texas 77010  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 P R O C E E D I N G S:

2 MR. SELIGMAN: Good morning, your Honor.  
3 David Seligman of Kirkland and Ellis LLP on behalf the  
4 debtors.

5 Your Honor, just before we turn to the  
6 agenda, I wanted to make a very brief update on the status  
7 of the plan process.

8 THE COURT: Sure.

9 MR. SELIGMAN: Your Honor, before we turn  
10 to this morning's agenda, I would like to provide the  
11 court's with a very brief status of our process. As your  
12 Honor is aware, we previously filed a notice of adjournment  
13 continuing the disclosure statement hearing from September  
14 11 to September 25th in an attempt to reach consensus with  
15 our unsecured and equity committees regarding the  
16 possibility of a rights offering open to Calpines' common  
17 shareholders who are guaranteed distribution plan.

18 Since that time we have had very active and  
19 constructive discussions with our committees, however, we  
20 have ultimately concluded that it was appropriate to  
21 proceed with the waterfall structure incorporated in the  
22 plan that we currently have on file. Accordingly, we will  
23 proceed with the disclosure statement hearing on September  
24 25th based upon the current plan structure in order to  
25 maintain a process and time line that ensures our emergence

1 by January 31, 2008, and preserves our very valuable  
2 Goldman exit financing package.

3 With that, your Honor, I would like to turn  
4 to this morning's agenda.

5 MR. STAMER: Your Honor, a think just a  
6 minor counterpoint is necessary.

7 Mike Stamer of Akin Gump on behalf of the  
8 creditors' committee. Mr. Seligman's comments are  
9 accurate, we have had constructive discussions with the  
10 debtors. We still have open issues with the debtors on  
11 their plan and disclosure statement. Our hope is that  
12 those issues would have been resolved in advance of today  
13 so that we could announce to the court that in fact at  
14 least the official creditors' committee and debtors are  
15 completely aligned. We are not, your Honor.

16 It is our hope in advance of Friday that we  
17 will be aligned, but, your Honor, if we're not, if we can't  
18 kind of button down the remaining issues, which we believe  
19 are very significant, we will be taking appropriate action  
20 to protect the unsecured creditors here. It is my sincere  
21 hope that that will not come to pass, but I didn't want to  
22 leave the court with the impression that we were all  
23 sitting around singing Kumbaya at a time when, frankly,  
24 we're not. Thank you.

25 THE COURT: Thank you.

1 MR. KAPLAN: Your Honor, Gary Kaplan from  
2 Fried Frank for the equity committee.

3 For the record, we are in the same position  
4 frankly as the unsecured committee. While we had a lot of  
5 dialogue with the debtors over the past few weeks,  
6 unfortunately, while we thought we were making progress,  
7 from the debtors' perspective I guess we weren't. They  
8 sort of just stopped negotiating with us and said they are  
9 done.

10 So as we said, right now we, too, have to  
11 protect our constituents. And unfortunately, based on a  
12 lack of recent dialogue, I am not hopeful that by the time  
13 we get to the 25th we are going to have a consensual deal,  
14 but of course we always remain open to attempting to reach  
15 a consensual deal and are hopeful that we will get there.

16 MR. SELIGMAN: Thank you, your Honor.

17 I'll now turn to this morning's agenda.

18 THE COURT: It's very interesting, it's  
19 kind of typical to hear a lot of self-serving statements,  
20 but we'll see how they play out.

21 MR. SELIGMAN: Yes.

22 Your Honor, matter number 1 on the agenda  
23 is the debtors' motion for entry of an order approving a  
24 partial transfer and release agreement between the debtors  
25 and Rosetta Resources. This matter is uncontested.



1 As your Honor is aware, in July of 2005  
2 Calpine sold substantially all of its domestic oil and gas  
3 assets to Rosetta. There had been a dispute, as of the  
4 petition date, as to whether certain leases had actually  
5 been completely assigned to Rosetta. There were certain  
6 consents that had to be obtained that there were issues  
7 about whether they were actually obtained as of the  
8 petition date. We previously assumed those leases from the  
9 debtors perspective and in the abundance of caution as the  
10 deadline is approaching.

11 Since that time we have talked a lot with  
12 Rosetta. We obviously have the fraudulent transfer action  
13 that's pending before this court, but there were a lot of  
14 issues pertaining to these leases where it wasn't clear as  
15 to who had ownership, who had title to them; but meanwhile  
16 Rosetta was actually operating the properties. So this  
17 motion incorporates a settlement agreement just on the  
18 narrow issue of some of these what we've called non consent  
19 properties, whereby we will agree to assign these leases to  
20 Rosetta.

21 In return for that Rosetta is basically  
22 agreeing to extend a marketing services agreement that has  
23 about 4 million dollars of benefits to Calpine as a quid  
24 pro quo for that. In addition, Rosetta is going to  
25 continue to maintain all of the obligations to take care of

1 and manage these properties. It's also going to take on  
2 certain risks in terms of negotiating with various other  
3 state authorities as far as some true-ups with respect to  
4 the properties.

5 As part of this also Calpine is going to  
6 get some release of collateral back. So we believe that  
7 this is appropriate in our business judgment to assign  
8 these to Rosetta. It preserves everyone's rights with  
9 respect the fraudulent transfer action and ultimately where  
10 successful these will be some of the ones that we shouldn't  
11 come back, but at least for the status quo we wanted to  
12 complete the transfer to allow the management of the  
13 properties to proceed uninhibited.

14 THE COURT: Does anyone want to be heard?

15 MR. KELLEY: Good morning, your Honor.  
16 Charles Kelley on behalf of Rosetta.

17 Again, as Mr. Seligman correctly stated,  
18 not withstanding the avoidance action that the debtors  
19 initiated, we have worked hard on this agreement and we are  
20 confident that it brings a lot of mutual benefits for both  
21 the debtors and Rosetta, and Calpine worked hard with  
22 Rosetta in getting it accomplished.

23 As the court may recall, last summer we  
24 spent some time talking about this Gulf of Mexico  
25 properties and some of the risks that the debtors and

1 Rosetta face with that. This will allow cleanup of that.  
2 At the same time it will allow us to continue using Calpine  
3 to market all the loose end production, which we believe  
4 generates support for both Calpine and Rosetta, so it is a  
5 mutual, beneficial document and we would ask the court to  
6 approve it.

7 THE COURT: So this eliminates some of the  
8 concerns with respect in dealing with regulatory  
9 authorities; is that correct?

10 MR. KELLEY: In large part, your Honor,  
11 that's correct. These are the properties where the  
12 counterparties are governmental agencies, and you can  
13 imagine, with all due respect to the parties in the  
14 courtroom, the headache it gives us sometimes. So this  
15 will allow us a significant overhead.

16 THE COURT: I am prepared to approve the  
17 transaction.

18 MR. SELIGMAN: Thank you, your Honor.

19 May I approach?

20 THE COURT: Sure.

21 I've approved the order.

22 MR. SELIGMAN: Thank you, your Honor.

23 Matter number 2 on the agenda is the  
24 debtors' motion for entry of a second amended order  
25 authorizing the debtors to pay certain prepetition sales,

1 use and franchise taxes.

2 Your Honor, we've been before you on more  
3 than one occasion on this. This is basically to increase  
4 the basket of available funds to pay prepetition taxes,  
5 including sales, franchise and use taxes. We have the  
6 original basket on day one to pay up to 8 million dollars  
7 of these taxes. We then came back to your Honor  
8 subsequently and increased the basket to 17.8 million  
9 dollars.

10 We now want to increase that basket by an  
11 additional half million dollar. And it would be to pay  
12 trust funds taxes or taxes that are most likely entitled to  
13 priority under 507(a)(8). There have been objections  
14 that --

15 THE COURT: Does anyone want to be heard?

16 The application is justified.

17 MR. SELIGMAN: Thank you. May I approach?

18 THE COURT: Yes.

19 I've approved the order.

20 MR. SELIGMAN: Your Honor, matter number 3  
21 on the agenda is the debtors' motion for entry of an order  
22 authorizing debtors to assume a construction and operating  
23 agreement between the city of Santa Rosa and Geysers Power  
24 Company LLC, which is one of the debtors.

25 Your Honor, this essentially concerns an

1 agreement whereby the city of Santa Rosa was going to  
2 construct a water to pipe pipeline for certain of the  
3 Geysers' plants owned by the Geysers Power Company, LLC.  
4 And essentially this is a motion to assume that  
5 construction agreement with some modifications which are  
6 laid out in the motion and the proposed order.

7 The bottom line is that under this proposed  
8 second amendment it will improve the cash flow of the  
9 doctors by at least 12 is million dollars for the term of  
10 the construction and operating agreements. We believe it  
11 is supported by the debtors' business judgment and ask that  
12 your Honor approve the application.

13 THE COURT: Does anyone want to be heard?

14 The application is granted.

15 MR. SELIGMAN: Thank you, your Honor.

16 May I approach?

17 THE COURT: Yes.

18 I've approved the order.

19 MR. SELIGMAN: Your Honor, the next matter  
20 on the agenda is the debtors' motion for entry of an order  
21 authorizing the debtors to assume the Calpine 2 contract,  
22 which is an electricity supply contract with the California  
23 Department of Water Resources. This is the last of the  
24 contracts that was on appeal to the Second Circuit stemming  
25 from your Honor's first day order authorizing the rejection

1 of these contracts; so this will resolve the appeals in the  
2 Second Circuit.

3 Essentially during the course of the case,  
4 and especially recently the company determined in its  
5 business judgment that the benefits of maintaining this  
6 contract actually outweighed any benefits from rejecting  
7 this contract or seeking to attempt to reject the contract  
8 and litigate in the Second Circuit on the issue. The  
9 debtors believe it made sense just proceed and assume the  
10 contract.

11 Simultaneously there were also filed by  
12 CDWR a number of objections to the disclosure statement to  
13 withdraw the reference, et cetera, and the resolution of  
14 this, which is basically the assumption of the contract,  
15 will resolve all of the issues with CDWR, any potential  
16 issues they may have with respect to the disclosure  
17 statement in our plan and resolve the motion to withdraw  
18 the reference and fully reach closure on all of these  
19 outstanding issues. And we believe that the debtors'  
20 business judgement supports the approval of the assumption  
21 of this motion.

22 THE COURT: Does anyone want to be heard?

23 Does this mean that there's nothing pending  
24 in the circuit with respect to jurisdiction on FERC related  
25 contracts either from this case or any other case?

1 MR. SELIGMAN: From this appeal, yes.  
2 There shouldn't be any remaining issues. We had sent a  
3 letter the second circuit informing them that we had  
4 reached an agreement principally with CDWR, and we asked  
5 them to hold their ruling until the assumption of this  
6 contract was approved.

7 Now that we've done that we are going to  
8 dismiss the appeal because all of the --

9 THE COURT: I understand that with respect  
10 to Calpine.

11 MR. SELIGMAN: Yes.

12 THE COURT: But weren't there other issues  
13 similar to this pending before the circuit?

14 MR. SELIGMAN: I don't believe so. I  
15 believe they all stemmed from the rejection of these  
16 contracts.

17 THE COURT: Very well. Does anyone want to  
18 be heard?

19 I'll approve the application.

20 MR. SELIGMAN: Thank you, your Honor.  
21 May I approach?

22 THE COURT: Yes.

23 MR. SELIGMAN: Thank you, your Honor.

24 Your Honor, the next matter on the agenda,  
25 matter number 5, is the debtor's motion for an order to

1 approve a stipulation resolving claims between Columbia  
2 Energy LLC, one of the debtors, Calpine Corporation and  
3 South Carolina Pipeline Corporation.

4 Your Honor, this essentially systems out of  
5 the debtors' rejection of a pipeline contract between  
6 Columbia Energy Center LLC and South Carolina Pipeline  
7 Corporation. The obligations under that pipeline were also  
8 guaranteed by Calpine Corporation. Columbia had asserted a  
9 proof of claim in the amount of 160 million dollars and  
10 change. The parties have agreed essentially to allow a  
11 claim for 49.4 million dollars as a rejection damages claim  
12 against Columbia Energy, as well as a 10.7 million dollar  
13 claim against Calpine Corporation.

14 We believe that based upon a review and  
15 analysis of the amount of claim, we believe that that  
16 number is appropriate. One of the issues was the  
17 appropriate discount rate to apply to the amount of the  
18 claim, and we are satisfied that the number in the  
19 settlement reflects a proper discounting of that number.

20 Your Honor, there was one limited objection  
21 filed by the TransCanada Pipeline Group. They were  
22 essentially concerned that the agreement between the  
23 parties as to the appropriate discount rate would have some  
24 impact or relevance to them.

25 We have resolved the issue with them by my



1 reading of a brief statement into the record, which is as  
2 follows: "With respect to the limited objections filed by  
3 'The Pipelines', that is TransCanada PipeLines Limited,  
4 Portland Natural Gas Transmission System, Gas Transmission  
5 Northwest Corporation and Nova Gas Transmission Ltd.,  
6 nothing in this order should be deemed to be a  
7 determination of any of the issues between the debtors and  
8 any of those pipelines or otherwise binding on such issues,  
9 nor shall such an order approving this settlement bar any  
10 of the pipelines from advocating for an application of a  
11 different discount or methodology for determining the  
12 credit value of any of The Pipelines' claims."

13 And so, with that, your Honor, that limited  
14 objection is resolved. There were no other objections to  
15 the settlement and we would request approval of the motion  
16 to approve the settlement.

17 THE COURT: Does anyone want to be heard?

18 I've read the suggested language. Do you  
19 want to be heard, sir?

20 MR. CODY: Just one clarification. Mark  
21 Cody on behalf of the South Carolina Pipeline.

22 To be clear, the stipulation resolves  
23 rejection damage guaranteed claim, as well as a prepetition  
24 plan component also referenced in the stipulation.

25 THE COURT: Well, there's been some

1 finessing with the language that's been included from  
2 what's been suggested by the limited objectors, and I've  
3 read their suggestive language and I find some of it  
4 somewhat inconsistent with the preservation of rights of  
5 this court. The suggested language put into brackets or  
6 otherwise persuasive in establishing a discount factor.

7 You've used a different term than  
8 persuasive, and I'm not sure that that eliminates this  
9 court's concern of having independence over making  
10 determinations with respect to a discount factor.

11 MR. SELIGMAN: Essentially I think what we  
12 were agreeing to in sum and substance with TransCanada was  
13 they were concerned that by this agreement between the  
14 debtor and Columbia that somehow they would be -- this is a  
15 two parties agreement, that somehow they would be bound or  
16 they would be precluded from any --

17 THE COURT: There's no question that they  
18 would not be bound; however, the language that they put in  
19 here that the discount rate should not have any effect or  
20 be persuasive with respect to a discount rate that might be  
21 brought before the court, that language I will not abide  
22 by. And I'm not sure that you're corrective language  
23 accomplishes the court's concern.

24 MR. SELIGMAN: Well, I guess -- I'm  
25 satisfied with your clarification of what I said on the

1 record, because it's not reflected in the propose --

2 THE COURT: There's nothing in connection  
3 with this settlement that should be binding upon this court  
4 with respect to its determination as to an appropriate  
5 discount rate. The settlement here might be persuasive in  
6 that regard. It might not be persuasive at all. But the  
7 court's independence in reaching a determination is to be  
8 preserved, and any language that you've put in substituting  
9 for the language that they have here is not to be construed  
10 as binding on this court's independence in reaching an  
11 appropriate determination on a discount rate.

12 MR. SELIGMAN: From the debtors'  
13 perspective we are certainly satisfied with that  
14 clarification.

15 THE COURT: Very well, then. I will  
16 approve the application.

17 MR. SELIGMAN: Thank you, your Honor.  
18 May I approach?

19 THE COURT: Yes.

20 I've approved the order.

21 MR. SELIGMAN: Your Honor, the next matter  
22 on the agenda, matter number 6, is being handled by my  
23 colleague, Steven Reisman from Curtis, Mallet-Prevost.

24 MR. REISMAN: Good morning, your Honor.  
25 Steven Reisman of Curtis, Mallet-Prevost, Colt and Mosle,

1 conflicts counsel to the debtors.

2 We are here today on Calpine Corporation's  
3 motion for an order pursuant to Sections 105 and 363 of the  
4 Bankruptcy Code approving Calpine Corporation's reexecution  
5 of a guarantee of a non debtor affiliate, Freeport Energy  
6 Center.

7 Freeport Energy Center is 236 megawatt  
8 natural gas cogen plant in Freeport, Texas. Freeport  
9 Energy Center has various agreements with Dow Chemical  
10 Company which were the subject of a prior order of your  
11 Honor authorizing us filing both the guarantee and those  
12 agreements between Freeport Energy Center and Dow under  
13 seal.

14 Calpine Corp. seeks authority today to  
15 reexecute a guarantee of the underlying agreements between  
16 Freeport Energy Center and Dow. The guarantee is  
17 beneficial to Calpine Corp. in that it allows Freeport  
18 Energy Center to -- by issuance of the guarantee it allows  
19 Freeport Energy Center to enter into phase three  
20 construction with respect to the Freeport Energy Center  
21 project. Freeport supplies both electricity and steam to  
22 Dow pursuant to various agreements.

23 Your Honor, the debtors believe that the  
24 reexecution of the guarantee is reasonable and in the  
25 exercise of the debtors' sound business judgment. Required

1 notice has been provided to all parties. There have been  
2 no objections that have been received. The order is  
3 acceptable to all the parties here. Copies of the  
4 agreements have been provided to the creditors' committee,  
5 the equity committee, and other parties who have requested  
6 it and that are subject to appropriate confidentiality  
7 agreements with the debtor.

8 Based upon the motion and the record today,  
9 we respectfully request that your Honor authorize the  
10 reexecution of the guarantee pursuant to the proposed  
11 order.

12 THE COURT: Does anyone want to be heard?

13 The application is granted.

14 MR. REISMAN: Thank you, your Honor.

15 May I approach?

16 THE COURT: Yes.

17 I've approved the order.

18 MR. REISMAN: Thank you.

19 MR. SELIGMAN: Your Honor, matters number 7  
20 through 13 are going to be handled by my colleague, Helena  
21 Huang. They relate now to omnibus claims objections.

22 MS. HUANG: Good morning, your Honor.

23 THE COURT: Good morning.

24 MS. HUANG: Helena Huang from Kirkland and  
25 Ellis on behalf of the debtors.

1                   Your Honor, matters 7 through 13 are the  
2 debtors' omnibus objections. The 18th omnibus is scheduled  
3 for hearing today and the rest are objections that have  
4 carried from previous hearings.

5                   Your Honor, I have submitted a claim status  
6 report to the court yesterday which gives the disposition  
7 of the objections. There have been some minor changes  
8 since the filing of that status report. With your  
9 permission I would like to hand up a black line report.

10                   THE COURT: I'll look at it.

11                   MS. HUANG: Thank you.

12                   THE COURT: Thank you.

13                   MS. HUANG: Thank you, your Honor.

14                   Your Honor, as you can see from the status  
15 report, either the debtor have withdrawn their objection or  
16 the claimants have agreed upon the amounts and the priority  
17 of the claims proposed by the debtors.

18                   The balance of the objections have been --  
19 will be continued to the next hearing. As part of our  
20 claims practice we have already notified each claimant,  
21 whose claim has not been resolved, of the continue hearing  
22 date.

23                   Your Honor, I have with me today a number  
24 of orders that account for these resolution. Unless your  
25 Honor have any questions, I would like to hand up the

1 orders for your approval.

2 THE COURT: Does anybody want to be heard?

3 Is there anybody here in response to the  
4 claims objection; the omnibus claims objection?

5 Yes, sir.

6 MR. ROSENZWEIG: Your Honor, David  
7 Rosenzweig on behalf of Utility Choice.

8 We're here on behalf of the claims  
9 objection, and I think we are going to have a scheduling  
10 conference, but we have no opposition to the order.

11 THE COURT: Very well.

12 MS. HUANG: Thank you, your Honor. May I  
13 approach with the order?

14 THE COURT: Yes. The fate of the claims,  
15 the adjournment and the resolution is clearly set forth  
16 both in the motion itself and in the report to the court,  
17 and I will entertain the order.

18 MS. HUANG: Thank you, your Honor.

19 May I approach?

20 THE COURT: Sure.

21 I've approved each of the submitted orders.

22 MS. HUANG: Thank you, your Honor.

23 MR. SELIGMAN: Your Honor, that's all we  
24 have this morning on the agenda.

25 I did just want to point out that there are

1 a number of adjourned matters. One of the two notes I just  
2 wanted to make about the adjourned matters, number one is,  
3 your Honor, there is matter number 17, which was the  
4 debtors' objection to the unsecured bond make whole claims.  
5 We had resolved that within the settlement in principle.  
6 We published a press release on that --

7 MR. KIESELSTEIN: Last night.

8 MR. SELIGMAN: Yesterday evening resolving  
9 that, so we are continuing it and will be filing a 9019  
10 motion with respect to that.

11 Also matter 18 on the agenda, which was the  
12 debtors' emergency motion to enforce the automatic stay  
13 against U.S. Kuil. The plaintiff in that action has agreed  
14 to withdraw their complaint filed in the California trial  
15 court, and so we judgement continued that to make sure that  
16 was effectuated, but that matter will also ultimately be  
17 off the calendar for the 25th.

18 THE COURT: Very well. Are there any other  
19 matters?

20 MR. SELIGMAN: That's it, your Honor.

21 THE COURT: Sir?

22 MR. ROSENZWEIG: I believe we were going to  
23 have a scheduling conference; I believe the debtor had  
24 requested that we have a scheduling conference.

25 MR. SELIGMAN: We are happy to do it here,



1 your Honor, or if you want to do it in chambers. It was a  
2 scheduling matter with respect to this adversary.

3 THE COURT: Well, if I do it here, it binds  
4 everybody here at enormous billing rates. And since it's a  
5 one on one situation regarding scheduling, we'll do it in  
6 chambers.

7 MR. SELIGMAN: That's fine, your Honor.  
8 Thank you.

9 MR. ROSENZWEIG: Thank you, your Honor.

C E R T I F I C A T E

STATE OF NEW YORK            }  
  }     ss.:  
COUNTY OF WESTCHESTER    }

I, Denise Nowak, a Shorthand Reporter  
and Notary Public within and for the State of  
New York, do hereby certify:

That I reported the proceedings in the  
within entitled matter, and that the within  
transcript is a true record of such proceedings.

I further certify that I am not  
related, by blood or marriage, to any of the  
parties in this matter and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007.

\_\_\_\_\_  
DENISE NOWAK